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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,315	07/13/2005	Christian Quellet	102790-195 (30059 US)	2667
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NORRIS, MCLAUGHLIN & MARCUS			EXAMINER	
875 THIRD AVE			GODENSCHWAGER, PETER T	
18TH FLOOR				
NEW YORK, NY 10022			ART UNIT	PAPER NUMBER
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			07/06/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/542,315

Applicant(s)

QUELLET ET AL.

Examiner

PETER F. GODENSCHWAGER

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 11, 2009 has been entered.

Applicant's reply filed June 11, 2009 has been fully considered. Claim 1 is amended and claims 1-17 are pending.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3 and 7-17 are rejected under 35 U.S.C. 102(b) as being anticipated by McManus et al. (Intl. Pub. No. WO 01/78657).

Regarding Claim 1: McManus et al. teaches a fragrance composition comprising a fragrance (Pg. 19, Ln 29), a liquid crystal forming material (Pg. 1, Lns. 9-10) containing a fatty alcohol having 22 carbon atoms (behenyl alcohol), and a thickening agent (reinforcing material) (Pg. 12, Lns. 19-25, Pg. 15, Lns. 5-10). McManus et al. further teaches that the active

ingredients (i.e. fragrance/perfume component) may form part of the ultimately formed liquid crystal/gel network (LCGN) and may be added to the composition before the LCGN is formed (Pg. 4, Lns. 25-27 and Pg. 20, Lns. 24-27). As such, a fragrance material that is part of a LCGN network and added/mixed with the LCGN material before forming the LCGN would necessarily be encapsulated by the LCGN (fully surrounded by the LCGN). McManus et al. does not disclose that any components other than water, emulsifiers, and an oil phase emollient are required for the invention (Pg. 4, Lns 19-25). As Applicant's original specification does not disclose that any such components would be detrimental to the basic and novel characteristics of the claimed composition, nor is there evidence on the record showing that such components would be detrimental to the basic and novel characteristics of the claimed composition, the composition of McManus et al. is deemed to satisfy the claim language "consisting essentially of".

Regarding Claim 2: McManus et al. further teaches adding as a reinforcing (thickening) material, an inorganic material (hydrated silica) (Pg. 16, Ln. 12).

Regarding Claim 6: McManus et al. further teaches that the reinforcing material (thickening agent) is magnesium trisilicate.

Regarding Claims 3 and 14-16: McManus et al. further teaches that reinforcing material (thickening agent) is gelatin (gelatine) (Pg. 16, Ln 11). McManus et al. additionally teach the composition comprising a non-ionic co-emulsifier (surfactant) (Pg. 9, Lns. 20-33) satisfying the limitation of an amphiphilic reinforcing material as disclosed by Applicant on Pg. 4, Lns. 15-20 of Applicant's original specification. It is noted that while claims 14-16 further limit the species

of gelatine and graft and block copolymers, such species are listed in the alternative in claim 3 and are thus not required components.

Regarding Claims 7 and 17: McManus et al. further teaches the liquid crystal-forming material comprising, in addition to a fatty alcohol having 22 carbon atoms (behenyl alcohol), a non-ionic co-emulsifier (surfactant) such as ethoxylated fatty esters (ethoxylated fatty alcohols) of 10 to 22 carbon atoms (Pg. 10, Lns 10-13 and Pg. 12, Lns. 29-30).

Regarding Claim 8: McManus et al. further teaches that the composition is a emulsion (dispersion) where the liquid crystal material is in the form of particles (vesicles) (Pg. 3, Ln. 32-Pg. 4, Ln.4).

Regarding Claim 9: McManus et al. teaches all the limitations of the composition of claim 1, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients.

Regarding Claim 10: McManus et al. teaches all the limitations of the composition of claim 1, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Examiners's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients.

Regarding Claim 11: McManus et al. teaches the all the limitations of the composition of claim 1, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients.

Regarding Claims 12 and 13: McManus et al. further teaches the composition as a skin moisturizing composition, (Pg. 1, Lns. 5-12) a personal care product commonly found in the house (household product).

Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by McManus et al. (Intl. Pub. No. WO 01/78657) when taken with Fowler et al. (US Pat. No. 5,534,265).

McManus et al. teaches the composition of claim 1 as set forth above. Furthermore, McManus et al. teaches that the reinforcing material (thickening agent) is one taught by Fowler et al. which is incorporated by reference in its entirety (Pg. 15, Lns 23-25). Fowler et al. teaches polyacrylamide co-polymers as reinforcing materials (thickening agents) (9:33-35).

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by McManus et al. (Intl. Pub. No. WO 01/78657) when taken with Peters et al. (US Pat. No. 4,643,898).

McManus et al. teaches the composition of claim 1 as set forth above. Furthermore, McManus et al. teaches the reinforcing material (thickening agent) is magnesium trisilicate (Pg.

16, Lns. 10-15), which is the product of a combination of sodium silicate and magnesium sulfate as evidenced by Peters et al. (3:15-30).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over McManus et al. (Intl. Pub. No. WO 01/78657) in view of Gerecht et al. (US Pat. No. 2,806,842).

McManus et al. teaches the composition of claim 1 as set forth above.

McManus et al. does not teach the composition comprising a hydrophobic reinforcing material (thickening agent) chosen from block and graft copolymers. However, Gerecht et al. teaches graft copolymers with hydrophobic backbones that are soluble in non-polar solvents (hydrophobic) (1:15-16, 64-70). McManus et al. and Gerecht et al. are combinable because they are concerned with the same field of endeavor, namely components useful as additives for lotions. At the time of the invention, a person of ordinary skill in the art would have found it obvious to use the graft copolymers of Gerecht et al. in the composition of McManus et al. and would have been motivated to do so because Gerecht et al. teaches that the graft copolymers would be useful as thickening agents in lotions (5:15-19).

Response to Arguments

Applicant's arguments filed June 11, 2009 have been fully considered but they are not persuasive.

Applicant's arguments concerning the newly added limitations to instant claim 1 have been sufficiently addressed in the new grounds of rejection above.

In response to applicant's argument that McManus utilizes the liquid crystal forming materials for seeking to stabilize oil-in-water emulsions, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicant argues that Fowler provides no nexus of similarity at all with McManus. However, Fowler is incorporated by reference in its entirety by McManus, and thus the rejection is a 102 rejection and need not rely on the combinability of Fowler and McManus.

Applicant further argues that Fowler teaches the polyacrylamides as gelling agents and not as reinforcing agents. However, Applicant discloses that hydrophilic organic reinforcing materials include copolymers containing poly(acrylamide) on Pg. 5, Lns. 15 of Applicant's original specification. Furthermore, Applicant discloses on Pg. 6, Lns. 20-30 of the original specification that the reinforcing agent may be chosen so as to create a soft gel (i.e. the exact function of a gelling agent).

Applicants argue that the graft copolymers of Gerecht et al. (US Pat. No. 2,806,842) are gelling agents and not reinforcing agents. However, Applicant discloses that hydrophobic organic reinforcing materials include block- and graft copolymers on Pg. 5, Lns. 25-32 of Applicant's

original specification. Furthermore, Applicant discloses on Pg. 6, Lns. 20-30 of the original specification that the reinforcing agent may be chosen so as to create a soft gel (i.e. the exact function of a gelling agent).

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER F. GODENSCHWAGER whose telephone number is (571)270-3302. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. F. G./
Examiner, Art Unit 1796
June 25, 2009

/Mark Eashoo/
Supervisory Patent Examiner, Art Unit 1796

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